

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**AUG 28 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

JOYCE S.,	)	
	)	
	)	2 CA-JV 2009-0036
Appellant,	)	DEPARTMENT A
	)	
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
ARIZONA DEPARTMENT OF	)	Rule 28, Rules of Civil
ECONOMIC SECURITY,	)	Appellate Procedure
MARIAH S., and JEREMIAH S.-S.,	)	
	)	
Appellees.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16659200

Honorable Terry L. Chandler, Judge

AFFIRMED

Sarah Michèle Martin

Tucson  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Kathryn E. Harris

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

ESPINOSA, Presiding Judge.

¶1 At the end of an initial severance hearing that appellant Joyce S. failed to attend on April 13, 2009, the juvenile court terminated her parental rights to Mariah and Jeremiah on the grounds of chronic substance abuse pursuant to A.R.S. § 8-533(B)(3) and length of time in care pursuant to § 8-533(B)(8)(a). On appeal, Joyce contends her attorney filed the notice of appeal prematurely, before the order of termination had been filed with the clerk of the court, and that the order was not final and appealable because the court failed to make the findings required by A.R.S. § 8-538. Joyce argues her counsel was ineffective in filing the notice of appeal because it deprived the juvenile court of jurisdiction to hear a motion to set aside the judgment that she had wanted counsel to file on her behalf pursuant to Rule 60(c), Ariz. R. Civ. P. *See also* Ariz. R. P. Juv. Ct. 46(E). For the reasons stated below, we affirm.

¶2 It appears that the juvenile court signed the minute entry dated April 13 on April 15. The order was not filed with the clerk of the court, however, until April 16. Apparently believing the order had been signed on the same day as the initial severance hearing, Joyce filed a notice of appeal on April 14, 2009. But, as the Arizona Department of Economic Security (ADES) points out, “a premature appeal from a minute entry order in which no appellee was prejudiced and in which a subsequent final judgment was entered . . . need not be dismissed.” *Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981); *see also Comeau v. Ariz. State Bd. of Dental Examiners*, 196 Ariz. 102, ¶ 16, 993 P.2d 1066, 1070 (App. 1999) (court of appeals has jurisdiction of appeal where notice of

appeal filed prematurely as long as appealable judgment subsequently entered). On this ground alone, we see no reason to dismiss this appeal.<sup>1</sup>

¶3 Joyce contends, and ADES concedes, that the order terminating her parental rights was not final and, therefore, not an appealable order because the juvenile court failed to enter the factual findings required by § 8-538(A). *See* Ariz. R. P. Juv. Ct. 103(A) (“Any aggrieved party may appeal from a final order of the juvenile court to the court of appeals.”). ADES is correct that in *In re Pima County Juvenile Action No. S-933*, 135 Ariz. 278, 281, 660 P.2d 1205, 1208 (1982), our supreme court held “the requirements of A.R.S. § 8-538(A) must be complied with in termination of parental rights cases before an order may be considered a final order and appealable under the juvenile rules.” The order in that case incorporated separate findings of fact and conclusions of law that had been proposed by ADES. *Pima County No. S-933*, 135 Ariz. at 279, 660 P.2d at 1206. Similarly, here the court essentially incorporated ADES’s motion when it found sufficient grounds existed to terminate Joyce’s parental rights based on chronic substance abuse and length of time in care “as set forth in the Motion for Termination of Parent-Child Relationship.” ADES’s motion contained detailed factual allegations that Joyce was deemed to have admitted by failing to

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<sup>1</sup>Nor do we find *Jared P. v. Glade T.*, 221 Ariz. 21, 209 P.3d 157 (App. 2009), applicable here. The court there stated as a general proposition that an appeal from an order that is not final is premature. 221 Ariz. 21, ¶ 14, 209 P.3d at 160. It did not address whether the court of appeals has jurisdiction when the notice of appeal is filed after the court has entered a substantively final order but before the order was signed and filed with the clerk of the court. The order in this case, in contrast to the order in *Jared P.*, was the final decision and ended the proceeding.

appear. See A.R.S. § 8-863; Ariz. R. P. Juv. Ct. 64(C), 66(D)(2); *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶¶ 8-9, 12, 158 P.3d 225, 228-29 (App. 2007). Additionally, the court made the requisite jurisdictional finding, cited the applicable subsections of § 8-533, and found a preponderance of the evidence established that termination of Joyce's parental rights was in the children's best interests. The order here satisfies the requirements of § 8-538(A), albeit minimally.<sup>2</sup>

¶4 Additionally, neither party requested more specific findings of fact, and as the juvenile court noted in its minute entry, ADES asked the court to sign the minute entry so that it would constitute the final order. In *Christy C. v. Arizona Department of Economic Security*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007), Division One of this court refused to address the appellant's challenge to the juvenile court's order on this ground because she had not asked the court for more specific findings and raised the challenge for the first time on appeal. The court added that, even if the order did not include sufficient factual findings, the court of appeals was not required to remand the case to the juvenile court "[because] any error would have been harmless." *Id.* n.5. Given the findings the court did make here and the fact that the court incorporated ADES's motion, the allegations of

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<sup>2</sup>We acknowledge that, in order to expedite the processing of juvenile appeals this court has encouraged the juvenile courts to enter and sign minute entries in proceedings to terminate parental rights, making such orders final and appealable, rather than direct ADES to submit formal findings of fact and conclusions of law, which only delays the process. But we caution against the entry of overly truncated minute entry orders that lack the factual findings required by § 8-538(A).

which Joyce was deemed to have admitted by not attending the hearing, any insufficiency was harmless.

¶5 For the reasons stated herein and because Joyce has presented no other issue for review and has not challenged the merits of the order terminating her parental rights, we affirm.

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PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

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JOHN PELANDER, Judge

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JOSEPH W. HOWARD, Chief Judge